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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		<b>Docket Number (Optional)</b>  RYM-723-1211
Application Number  09/986,771		Filed  November 9, 2001
First Named Inventor  NAKATSUKA et al.		
Art Unit  3714		Examiner  Pandya, S.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

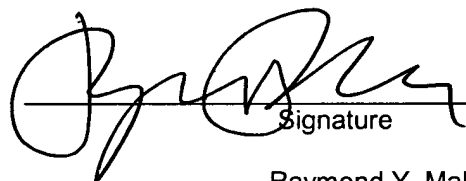
I am the

☐ Applicant/Inventor

☐ Assignee of record of the entire interest. See 37 C.F.R. § 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96)

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(Reg. No.)

☐ Attorney or agent acting under 37CFR 1.34.  
Registration number if acting under 37 C.F.R. § 1.34 \_\_\_\_\_

  
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Requester's telephone number

\_\_\_\_\_  
February 15, 2008

\_\_\_\_\_  
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.\*

☒ \*Total of 1 form/s are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**STATEMENT OF ARGUMENTS FOR PRE-APPEAL REVIEW**

The following listing of clear errors is responsive to the Final Rejection mailed November 19, 2007

**The Final Rejection fails to establish that claims 1-6, 8-14, 16-27 and 38-44 are anticipated under 35 U.S.C. §102(e) by Yoshitomi et al (U.S. '998, hereinafter "Yoshitomi").**

**Independent Claims 1, 12-14, 25-27, 38, 40 and 42:**

Anticipation under Section 102 of the Patent Act requires that a prior art reference disclose every claim element of the claimed invention. See, e.g., *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1574 (Fed. Cir. 1986). Yoshitomi fails to disclose every claim element of the claimed invention. In particular, Yoshitomi fails to disclose the following limitation of claim 1 (similar comments apply to independent claims 12-14, 25-27 and 38):

correlation evaluation section for evaluating correlation in terms of game operation *with said other game machines* based on the data stored in said first operation timing storage section and said second operation timing storage section (emphasis added).

The Final Rejection expresses a confusion regarding two different concepts: (i) correlating operation timing of one game machine with operation timing of another game machine (i.e., *relative* time lag between operation timings of different game machines) and (ii) correlating operation timing of one game machine with predetermined operation timing data (i.e., *absolute* time lag between a game machine and predetermined operation timing data). Note, for example, that the second operation timing storage section of claim 1 stores the data stored in the first operation timing storage section of another game machine. The data stored in the first operation timing storage section of the another game machine relates to operation timing data of the another game machine.

While Yoshitomi appears to disclose concept (ii), Yoshitomi does not disclose concept (i). Independent claims 1, 12-14, 25-27 and 38 require at least concept (i). Also, independent claims 40 and 42 each requires both (i) a relative time lag and (ii) an absolute time lag. Accordingly, Yoshitomi does not disclose every claim element of independent claims 1, 12-14, 25-27 and 38, as well as independent claims 40 and 42. Namely, Yoshitomi fails to disclose those claim limitations relating to concept (i):

correlating operation timing of one game machine with operation timing of another game machine.

Page 3, lines 4-9 of the Final Rejection alleges that col. 3, lines 48-67 of Yoshitomi discloses the above-noted limitation of claim 1. However, the "Response to Arguments" section (bottom of page 5) of the Final Rejection alleges that col. 9, lines 40-60, col. 10, lines 25-38 and 64-68 and cols. 11-12 discloses the above-noted limitation. Applicant disagrees with each of these allegations. Each of these specifically identified portions of Yoshitomi is addressed below.

Col. 3, lines 48-67 of Yoshitomi discloses the following:

scrolling device which continuously changes the relationship between the musical piece and the display range in response to a predetermined record start manipulation of the input apparatus so that the editing position in the edit screen continuously changes forwards or backwards with respect to the musical piece; and edit recording device which detects at least one part of the manipulations of the timing manipulation members and the plurality of selection manipulation members with respect to the input apparatus while the relationship between the musical piece and the display range is being changed by the scrolling device, displays a note mark corresponding to the detected manipulation in the edit screen, and changes the performance data so that the manipulation corresponding to the note mark is stipulated in the performance data.

According to this aspect, the scrolling of the edit screen starts when a record start manipulation is carried out to the input apparatus. Then, when the timing manipulation member and selection manipulation member of the input apparatus are manipulated during scrolling, a note mark is displayed in the edit screen in accordance with the manipulation and the performance data is changed in accordance with the change in the display. Therefore, the manipulations of the input apparatus in a predetermined range of the musical piece can be efficiently edited.

This portion (Col. 3, lines 48-67) of Yoshitomi merely relates to editing data of a musical piece, and not to evaluating correlation of operation timing data between two different game machines.

Col. 9, lines 40-60 of Yoshitomi discloses the following:

When the controller 12 is manipulated to start the game, the BGM begins and rod-like note marks 36R, 36G and 36B appear in accordance with a predetermined timing at the bottom ends of the areas 32R, 32G

and 32B. The note marks 36R, 36G and 36B gradually move upwards as the BGM progresses. By manipulating the picking lever 22 while pressing the neck button 23R corresponding to the area 32R at the moment when the note mark 36R in the area 32R has overlapped with the reference mark 34R, the sound effect allocated to the note mark 36R is superimposed over the BGM. The CPU 1 detects the deviation between the timing at which the picking lever 22 was manipulated and the timing at which the note mark 36R overlapped with the reference mark 34R. The smaller the deviation, the higher the CPU 1 evaluates the player. The reference marks 34G and 34B and the note marks 36G and 36B in the other areas 32G and 32B have a similar relationship with the neck buttons 23G and 23B and the picking lever 22. Hereinafter, the note marks 36R, 36G and 36B will be referred to as the note marks 36 unless there is a need to distinguish among them.

This portion (Col. 9, lines 40-60) of Yoshitomi discloses displaying predetermined operation timing data (via note marks 36R, 36G and 36B) to instruct a solo player when he should manipulate (picking lever 22 while pressing an appropriate neck button) his/her controller, and determining the degree of match between operation timing of the solo player with predefined operation timing data. This portion of Yoshitomi appears to be relevant to, for example, claim 2 which states “independent evaluation section for evaluating whether the timing based on the data stored in said first operation timing storage section is in a predetermined range from the timing based on said operation timing data.” While Yoshitomi thus discloses evaluating correlation between actually played timing data from a first machine and displayed operation timing data, Yoshitomi does not disclose evaluating correlation between actually played timing data from two different machines.

Col. 10, lines 25-38 and 64-68 of Yoshitomi discloses the following:

As shown in FIG. 4, an image display 40 is provided in the center of the game screen 30 and displays animations and the like in time to the musical piece. Moreover, a level gauge 41 and a score display 42 are provided above the image display 40 in correspondence with the indicator 31. The level gauge 41 and the score display 42 are provided in order to show the evaluation of the manipulation carried out by the player. An evaluation of the player's technique is visually displayed according to the length of the level gauge 41 from its left or right side. The higher the evaluation, the greater the length of the level gauge 41. Each player's score is calculated based on the determination of the manipulation timing described above and is displayed in the score display 42....

The performance data stipulates contents of the manipulations to be specified to the player via the indicator 31, and allocation of the sound effects to be reproduced in correspondence with the manipulations. The image data is needed for displays on the game screen 30.

This portion (col. 10, lines 25-38 and 64-68) of Yoshitomi merely relates to evaluating one or more players and displaying each player(s) score via gauge 41 and score display 42. Each player's score is based on his/her individual performance.

Cols. 11-12 of Yoshitomi discloses a multi-player game (twin 1 and twin 2). However, each player of the multi-player game is essentially scored individually by comparing his/her own actual controller manipulation as detected and the predetermined performance data he/she should have played. See "...the degree of match between the detected result and the manipulation specified by the performance data is detected (Step S7)." There is no disclosure of comparing the actually detected controller manipulations of one player with the actually detected controller manipulations of the other player.

**Independent claims 40 and 42:**

As noted above, independent claims 40 and 42 each requires an absolute time lag and a relative time lag. While Yoshitomi discloses an absolute time lag for at least one player, Yoshitomi does not further disclose a relative time lag (i.e., time lag between the operation timings of the operation switches operated by one player on one game machine and the operation timings of the operation switches operated by another player on another game machine). Page 5, line 10 of the Final Rejection makes specific reference to col. 11, lines 30-60; col. 12, lines 39-65 and col. 15, lines 30-50 of Yoshitomi. However, none of these specifically identified parts of Yoshitomi discloses a relative time lag as claimed.

**Dependent claims 3 and 17:**

Dependent claim 3 further requires "wherein said correlation evaluation section evaluates whether both the timing based on the data stored in said first operation timing storage section and the timing based on the data stored in said second operation timing storage section are in a predetermined range of each other." Dependent claims 17 and 30 (withdrawn) require similar limitations. This claim limitation requires that the evaluation of whether data is in a predetermined range is based on timing between the two game

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machines, not based on timing data from one of the game machine and the displayed operation timing data. For these reasons and the reasons discussed with respect to base independent claims 1 and 14, Yoshitomi fails to disclose, expressly or inherently, the limitations of claims 3 and 17.

**Dependent claims 8 and 21:**

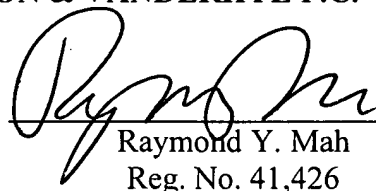
Dependent claims 8 and 21 require, among other things, *infrared* communications. Dependent claim 34 (withdrawn) also requires a similar limitation. Yoshitomi fails to disclose any *wireless* communications, let alone *infrared* communications. The Final Rejection (see, e.g., pages 3-4 and “Response to Arguments” section) fails to even address this limitation. The absence of any element of the claim from the cited reference negates anticipation. See, e.g., *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 715 (Fed. Cir. 1984). Anticipation is not shown even if the differences between the claims and the prior art reference are insubstantial and the missing elements could be supplied by the knowledge of one skilled in the art. See, e.g., *Structural Rubber Prods.*, 749 F.2d at 716-17.

Applicant therefore respectfully requests that the pre-appeal panel find that the application is allowed on the existing claims.

Respectfully submitted,

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